



**NORTH CAROLINA  
PUBLIC STAFF  
UTILITIES COMMISSION**

September 12, 1997

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Office of the Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Re: CC Docket No. 94-129

Dear Sir:

Enclosed is a diskette containing the Initial Comments of the Public Staff - North Carolina Utilities Commission dated September 15, 1997. A copy of this diskette is also being sent to Cathy Seidel, via Federal Express, Next Day Delivery.

Sincerely,

Vickie L. Moir  
Staff Attorney

VLM:dd

Enclosure

c: Cathy Seidel  
Common Carrier Bureau  
2025 M Street, NW  
Washington, D.C. 20554

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PUBLIC STAFF  
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Office of the Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Re: CC Docket No. 94-129

Dear Sir:

Enclosed herewith for filing on September 15, 1997, in the above docket, are the original and eleven (11) copies of the Initial Comments of the Public Staff - North Carolina Utilities Commission.

A copy is being forwarded to Cathy Seidel of the Common Carrier Bureau and to the International Transcription Services, Inc., via Federal Express, Next Day Delivery. Two copies are being sent by U. S. Mail, first class, postage prepaid to the Formal Complaints Branch, Enforcement Division.

Sincerely,

Vickie L. Moir  
Staff Attorney

VLM:dd  
Enclosures

c: Cathy Seidel  
Common Carrier Bureau  
2025 M Street, NW  
Washington, D.C. 20554

Formal Complaints Branch  
Enforcement Division  
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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of

Implementation of the Subscriber Carrier )  
Selection Changes provisions of the )  
Telecommunications Act of 1996 )  
Policies and Rules Concerning )  
Unauthorized Changes of Consumers' )  
Long Distance Carriers )

**CC DOCKET NO. 94-129**

**INITIAL COMMENTS OF THE  
PUBLIC STAFF - NORTH CAROLINA UTILITIES COMMISSION**

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Post Office Box 29520  
Raleigh, North Carolina 27626-0520

(919) 733-6110

Dated: September 15, 1997

The Public Staff - North Carolina Utilities Commission, by and through its Executive Director, Robert P. Gruber, submits these Initial Comments in response to the Federal Communications Commission's (Commission) request in the Further Notice of Proposed Rulemaking (FNPRM) in CC Docket No. 94-129 adopted on July 14, 1997 and released on July 15, 1997.

The Public Staff is an independent agency charged by N.C.G.S. 62-15 with representing the using and consuming public before the North Carolina Utilities Commission (NCUC) in matters affecting the rates and services of public utilities. As part of its responsibilities, the Public Staff investigates complaints addressed by consumers to the NCUC. In this capacity, the Public Staff becomes directly involved in slamming complaints made by North Carolina consumers against interexchange carriers (IXC). The Public Staff reviews these complaints and assists consumers in determining the validity of the preferred IXC change.

Thus, the Public Staff has considerable experience in dealing with the frustrations of consumers attempting to resolve slamming complaints as described by the Commission in the FNPRM. In addition, the Public Staff has dealt directly with IXCs in attempting to resolve these consumer complaints. As a result, the Public Staff is cognizant of the problems slamming presents both to consumers and the IXCs.

#### **SUMMARY**

The Commission should modify its rules concerning carrier changes to include carriers providing telecommunications exchange service as well as toll service. In addition, the rules should also include carriers that provide access to toll service providers. The proposed rules should also be modified to specify that all forms of solicitations must adhere to the verification methods contained in the rules. The Public Staff also believes that the Commission should codify definitions of "submitting carrier" and "executing carrier" as well as spell out the "two-step LOA" process to recognize that it may be used on the submitting end as well as the executing end of the process.

Although compliance by the submitting carrier should facilitate timely and accurate execution of a change, the Public Staff believes that executing carriers should be required to execute a change within a specific period of time after receiving the change request from the submitting carrier. In addition, the executing carrier should be required to process change requests from non-affiliated companies with the same level of service as change requests submitted by itself or its affiliated carriers.

The Commission's verification rules should apply when customers are solicited regarding preferred carrier freezes. The Public Staff believes that there is potential for abuse of this option, namely, carriers continuing to convert consumers back to their service once the consumers have changed to a different carrier.

The “Welcome Package” verification method should be discarded by the Commission. This method appears to be used mostly as an additional verification procedure. Even in those cases, the “Welcome Package” verification has failed to prevent consumers from being switched without authorization.

Consumers should not be required to pay monies to carriers resulting from an unauthorized carrier change. To prevent potential abuse, the Public Staff recommends that charges be forgiven for a reasonable period of time after the customer receives notice of the carrier change. Unauthorized carriers should be liable to the consumer’s previous carrier for any monies actually paid by the consumer which are not credited or refunded to the consumer.

When carriers retain monies paid by the customer, the Commission’s proposed rules regarding payments from the unauthorized carrier to the authorized carrier should be enforced. In addition, the consumer should be made whole as proposed by the Commission. With regard to the proposal for a neutral third party to execute all carrier changes, the Public Staff believes that, at this time, the proposal would produce very little change in the number of carrier change disputes and would not be cost-justified.

The Public Staff disagrees with the Commission’s tentative conclusion that the changes recommended in its proposed rules will best implement the statutory prohibition against slamming by carriers, protect the rights of consumers to be free of deceptive and misleading marketing practices, and help promote full and fair competition in the marketplace. The flaw in the proposed rules is essentially the lack of precision with respect to the 800 number and third party verifications.

Unless the Commission imposes precise guidelines detailing when the 800 number and third party verifications can be considered valid, as it has done for written LOAs, consumers will still be misled by telemarketing callers and be subject to carrier changes which they did not authorize. The Public Staff believes that the 800 number and third party verification methods should require verification in an electronic or oral equivalent to the written LOA requirements. Further, these verifications should be recorded for storage in the event of a consumer dispute just as written LOAs are now saved.

The Public Staff believes that the Commission should clarify that all unauthorized carrier changes, including those made in error, are subject to the proposed rules. Further, the Commission should specify that its proposed rules are essentially minimum requirements and that the states may, if they so choose, impose additional requirements.

### **INITIAL COMMENTS**

#### **Should 47 C.F.R. §§ 64.1100, 64.1150, Apply to All Telecommunications Carriers?**

As noted in the FNPRM, Section 258 of the Telecommunications Act of 1996 (TA96) requires the Commission to implement rules regarding the unauthorized change of a subscriber’s

telecommunications carrier. The Public Staff concurs with the tentative conclusion that the rules should apply to unauthorized changes of telecommunications exchange and toll service providers.

The Commission's tentative conclusion is consistent with the Public Staff's position in Docket No. P-100, Sub 139, which is currently pending before the NCUC. In that proceeding, the Public Staff filed a petition with the NCUC to initiate a rulemaking regarding the solicitation and change of a subscriber's intrastate communications carrier.<sup>1</sup>

The Public Staff recognizes that customers will soon have the option of subscribing to traditional exchange service as well as intraLATA and interLATA toll services.<sup>2</sup> With the flexibility to change service providers, subscribers of traditional exchange service will be subject to solicitations just as toll service subscribers are today. As a result, exchange service subscribers will need the same protections from marketing abuses as are afforded subscribers of toll service.

In addition, the Public Staff believes that the Commission should clarify that telecommunications exchange service also includes the access services used to connect subscribers with their preferred toll service providers. In the alternative, the Commission should identify access service as a separate telecommunications service to be included in its rules. In some cases, subscribers can utilize a different carrier for access service than traditional exchange service. To the extent that consumers can choose a different carrier for access to its toll service provider, the Commission should recognize that such choices are available and make the appropriate adjustments to its proposed rules. The Commission's rules should make clear that a subscriber's authorization is needed prior to making a change in the provider of access services.

With regard to the proposed changes in the rule to include both submitting and executing carriers, the Public Staff believes that both types of carriers should have certain responsibilities and be subject to penalties for failure to uphold those responsibilities. At this time, the Public Staff essentially concurs with the Commission's tentative conclusion that compliance by the submitting carrier should facilitate timely and accurate execution of the carrier change. However, failure to specify a deadline for implementing a change received by the executing carrier could result in conversion delays. Having a date certain by which the change should be implemented will assist the consumer and the submitting carrier for planning purposes in knowing the latest date when the new service would be implemented. The Public Staff therefore, recommends that an executing carrier be required to implement the change within a specific period of time after receiving the change.

The Public Staff also believes that in cases in which the executing carrier is the same as, or affiliated with, the submitting carrier, certain precautions are necessary. The need for these

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<sup>1</sup> This petition was filed on May 30, 1997. Following the release of the Commission's FNPRM, the NCUC postponed consideration of the Public Staff's petition.

<sup>2</sup> As of the date of this filing, over twenty-five competitive local exchange providers have received certificates to offer local exchange service in North Carolina.

precautions arises from the possibility that the executing carrier may place a higher priority on changes submitted by itself or an affiliated carrier. To lessen the likelihood of this abuse, the Public Staff believes that the executing carrier should be required to process change requests from non-affiliated companies with the same level of service as change requests submitted by itself or its affiliated carriers.

In addition, the Public Staff recommends that the Commission include definitions of “submitting carrier” and “executing carrier” in the rules. For those toll carriers who have employees with little or no telecommunications experience, including these definitions in the rules will lessen confusion as to their responsibilities under the carrier change rules.

Further, the Commission has previously recognized through adoption of the “two-step LOA” process that some carriers submit requests through an underlying IXC. This process should be specifically defined in the rules. Codifying this “two-step LOA” process will more clearly explain the responsibilities of those parties using this process to those carriers without a significant amount of telecommunications experience. In addition, the Commission should recognize this same “two-PIC” procedure can occur with executing carriers as well.

The Public Staff does not believe that the incumbent local exchange providers should be subject to different or more stringent requirements than the other carriers. Like all carriers, the incumbent local providers have an incentive to convert as many customers as possible to their services. However, the consequences of making unauthorized changes should dissuade the incumbent local providers from making unauthorized changes to the same extent they dissuade any other kind of carrier from doing the same thing.

The Public Staff notes that the incumbent local providers are not the only entities with the ability to make unauthorized changes without detection. There are many carriers operating in the toll market today that change subscribers’ toll service without detection because no change in the PIC code is necessary. Although some carriers argue that, if no PIC code change is made, the subscribers have not had their long distance carrier changed, the effect on the subscribers is the same and slamming has occurred.

### **Should the Verification Rules Apply When Carriers Solicit Customers Regarding Preferred Carrier Freezes?**

The Public Staff believes that the Commission’s verification rules should apply when customers are solicited regarding preferred carrier freezes. There is potential for abuse of the preferred carrier freeze option. If a carrier considers its LOA also to be a request for a freeze, consumers changing from the carrier’s services may be switched back to the carrier after having desired and made arrangements for another carrier’s services. To avoid the situation in which LOAs are used for more than one purpose, the Public Staff believes that a carrier change and a carrier freeze should be in separate instruments.

**Should the “Welcome Package” Described in 47 C.F.R. § 64.1100(d) Continue to Be a Viable and Necessary Carrier Change Verification Alternative, and Do Consumers Derive Any Benefits from this Option?**

The Public Staff does not believe that the so called “Welcome Package” provides sufficient protection to consumers against unauthorized changes. Therefore, the Public Staff recommends that the Commission eliminate the “Welcome Package” option as a means of verifying a consumer’s carrier change. In theory, these packages are not negative-option LOAs. They are simply used as a verification measure once a consumer has expressed a desire to change service providers. However, reliance on “Welcome Packages” as the sole means of verifying a carrier change places too many expectations on a questionable practice. The Public Staff notes that even when used as a second means of verification, the “Welcome Packages” do not necessarily provide adequate protection against slams.

As currently applied, this verification measure requires that, in a fourteen day time span, the “Welcome Package” be mailed from the carrier and received by the subscriber; that the “Welcome Package” be read by an individual responsible for subscribing to service for the telephone line that is to be changed; and, if a change is not desired, that the prepaid postcard be mailed from the subscriber and received by the carrier. Obviously, there are numerous ways in which the “Welcome Package” could be misplaced or lost. While the “Welcome Package” may be adequate most of the time, it is unacceptable as the sole means of verifying a consumer’s carrier change because of the potential conflict that arises when the carrier insists that a “Welcome Package” was sent and the consumer equally insists that a “Welcome Package” was not received.

**What Are the Liabilities for Consumer-to-carrier, Carrier-to-carrier, and Carrier-to-consumer in Light of TA96's New Provisions?**

TA96 does not address the liability of consumers to carriers in the event of an unauthorized change. The Public Staff strongly endorses the position that a consumer should not be liable for any charges to a carrier which has changed the consumer without authorization. As noted in the FNPRM, the authorized carrier will forego revenues under this scenario. However, the authorized carrier will also have foregone the expense of providing service to the consumer as well. Thus, the only loss to the authorized carrier is the foregone profits which would have been generated by continuing to provide service to the consumer.

Much discussion has been generated by IXC's regarding the potential for fraud should consumers be absolved from liability of charges “owed” to unauthorized carriers.<sup>3</sup> The Public Staff believes that the majority of the fraudulent practices currently taking place involve carriers slamming

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<sup>3</sup> In NCUC Docket No. P-100, Sub 39, comments by one group of IXC's accuse the Public Staff of promoting fraud through its recommendation that consumers not be required to pay for service provided by unauthorized IXC's.

consumers without their consent, not deadbeat consumers trying to get free service. Indeed, the IXCs' argument is like urging the Commission not to pour water on a fire for fear of drowning.

The advantage of absolving consumers of liability for charges to unauthorized carriers is that it easily metes out punishment for failure to obtain the consumer's consent for the change. In addition, it provides some compensation to the consumer for the time and effort of investigating the problem and taking the steps necessary to correct the problem and reduces the expense which would be otherwise incurred by the authorized carrier in rerating the customer's bill.

The failure of consumers to report unauthorized changes in order to avoid payment of charges is not an imperceivable consequence of the Public Staff's recommendation. Among other things, this practice could result in increased uncollectibles for carriers, thereby causing increased costs to otherwise unaffected consumers. Therefore, the Public Staff concurs with the position of the New York Public Service Commission, referred to in the FNPRM, that a time limit should be set during which consumers would not be liable for charges to carriers making unauthorized changes.

Consumers become aware of carrier changes in various ways. In some instances, the customer finds out about the change through a change charge from the local telephone company or the unauthorized carrier's name appearing on long distance charges. In other cases, the consumer becomes aware of the change when notified by his previous carrier. Regardless of how the customer becomes aware of the change, an appropriate amount of time should be allowed in which the consumer can verify that the unauthorized change has taken place, contact the preferred carrier in order to be changed back, and actually have the change occur. Because of the multiple parties currently involved in changes, this process sometimes takes time. This process will only become more complicated and time consuming as more and more companies enter the local and toll markets. The Public Staff believes that consumers should be absolved of charges for a reasonable period of time from when the consumer has received notice of the change in carrier.<sup>4</sup>

Concerning the liability of unauthorized carriers to authorized carriers, the Public Staff agrees with the Commission that TA96 requires that any monies collected by the unauthorized carrier be paid to the authorized carrier. The Public Staff recommends that to the extent that an unauthorized carrier retains any monies from a consumer, those monies should be turned over to the consumer's authorized carrier. Otherwise, there should be no amount owed to the authorized carrier by the unauthorized carrier or the consumer.

The carriers' liability to consumers for premiums is a more complicated problem. The Public Staff believes that this liability should depend on how the carriers dealt with the liability for charges for service. If the consumer pays no monies to the unauthorized carrier or the consumer receives a credit for the full amount paid to the unauthorized carrier, the Public Staff does not believe the

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<sup>4</sup> Due to the manner in which some IXCs bill for service, customers may not become aware of the change in a timely manner. Therefore, the Public Staff recommends that the consumer should become aware of the change before the "clock" starts ticking.

consumer should be eligible for any further credits from either carrier. However, if monies have been paid by the consumer and are not credited back by the unauthorized carrier, the Public Staff supports the Commission's proposal to require that the consumer be made whole.

Nevertheless, the Public Staff has considerable doubts as to the viability of the Commission's proposal. Some of the carriers, particularly the smaller IXCs, do not have access to the bills sent to the consumer and, therefore, cannot rerate the calls to the consumer or provide the authorized carrier with assistance in determining the premiums that should have accrued to the consumer.

The Commission also requested comments on the matter of having a neutral third party execute all carrier changes. Although the use of a neutral third party to execute carrier changes should reduce change disputes, the Public Staff is concerned that the cost of implementing and supporting such a system would be high. The Public Staff questions whether the change in the number of carrier change disputes would be worth the additional expense. In addition, adding another party to the carrier change process would add another level of complexity to the process and, hence, another opportunity for an inadvertent carrier change to take place.

Therefore, at this time, the Public Staff does not recommend that carrier changes be executed by a neutral third party. However, should unauthorized slams continue to increase at the pace exhibited in recent years, neutral third party execution of carrier changes may become more justifiable.

**Should a Bright-line Evidentiary Standard Be Established for Determining Whether a Consumer Has Relied on a Resale Carrier's Identity of its Underlying, Facilities-based Network Provider, Hence Requiring That the Resale Carrier Notify the Consumer If the Underlying Network Provider Is Changed?**

The Public Staff believes that the consumer should always be informed of the change in a network provider. Obviously, when a reselling carrier contracts with the consumer agreeing to use a particular network carrier, the consumer should be informed of a carrier change. And, certainly to the extent that a consumer is induced to use a reseller's services due to the identity of the underlying or network carrier, the Public Staff believes that such consumers should be notified of the change in the underlying carrier.

The difficulty arises as to whether such inducement occurred and whether it was relied upon by the consumer in choosing the reselling carrier. Marketers for some reselling carriers extol the virtues of the underlying network provider in soliciting consumers. However, making an after-the-fact determination of the extent to which the consumer relies upon this information in making his decision will be nothing more than conjecture. Because of this situation, the Public Staff believes that consumers should be notified whenever the underlying network provider is changed. Further, once the consumer has been given notice of the change, the consumer should also have the opportunity to discontinue service with the reselling carrier without any termination liability.

## **Will the Proposed Rules Best Implement the Statutory Prohibition Against Slamming?**

The Commission has tentatively concluded that the changes recommended in its proposed rules will best implement the statutory prohibition against slamming by any telecommunications carrier, protect the rights of consumers to be free of deceptive and misleading marketing practices, and help promote full and fair competition among telecommunications carriers in the marketplace by ensuring that consumers' choices are honored.

The Public Staff respectfully disagrees with parts of this conclusion. The Commission appears to have appropriate procedures in place once an unauthorized change has been determined. However, the Public Staff believes that the lack of precision in the Commission's proposed rule changes will result in a failure to provide adequate safeguards for consumers to prevent the unauthorized changes.

Despite the preferred carrier change requirements previously implemented by the Commission, complaints made by consumers alleging unauthorized changes have increased dramatically in recent years. According to the FNPRM, complaints filed with the Commission increased six-fold between 1993 and 1995. Based on numbers included in the FNPRM, slamming complaints to the Commission increased by more than 42% from 1995 to 1996.

Complaints filed with the NCUC have likewise increased dramatically over the past several years. During 1995, the Public Staff received 456 slamming complaints. In 1996, the Public Staff received 657 slamming complaints, a 44% increase over the complaints received during 1995. Thus, North Carolina has experienced an increase in slamming between 1995 and 1996 similar to that reported by the Commission.

The Commission has, either on its own or as a result of petitions by interested parties, instituted several proceedings or rulemakings concerning the switching of a consumer's long distance carrier since implementing equal access requirements in its Allocation Order.<sup>5</sup> Indeed, the instant FNPRM makes the sixth time that the Commission has looked at the rules concerning unauthorized changes since first implementing them in 1985.<sup>6</sup> Despite these frequent reviews and

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<sup>5</sup> Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase 1, *Memorandum Opinion and Order*, 101 FCC 2d 911 (1985).

<sup>6</sup> Earlier reviews were in CC Docket No. 83-1145 Phase I, Investigation of Access and Divestiture Related Tariffs, Allocation Plan Waivers and Tariffs, *Memorandum Opinion and Order*, 101 F.C.C. 2d 935; Illinois Citizens Utility Board Petition for Rule Making, *Memorandum Opinion and Order*, 2 FCC Rcd Vol 6 1726 (1987); CC Docket No. 91-64, Policies and Rules Concerning Changing Long Distance Carriers, *Report and Order*, 7 FCC Rcd 1038 (1992); CC Docket No. 91-64, Policies and Rules Concerning Changing Long Distance Carriers, Petitions for Reconsideration and Clarification, *Order*, 8 FCC Rcd 3215 (1993); CC Docket No. 94-129, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, *Report and Order*, 10 FCC Rcd 9560 (1995).

changes, slamming complaints have continued to increase. In the last several years these increases have been dramatic, as pointed out in the FNPRM.

It is not surprising that consumer complaints alleging slamming have become so widespread, however. The current rules proposed in the FNPRM are much less stringent than those originally set by the Commission. The Commission's original requirement was for carriers to have on file a written letter of authorization (LOA) signed by the consumer prior to submitting a change to the local exchange company.<sup>7</sup>

Now, instead of this absolute requirement, the proposed rule provides that carriers may either obtain an LOA or, if telemarketing, use one of four methods to "verify" a consumer's desire to make a change. The four verification methods are: (1) obtain an LOA from the subscriber; (2) receive confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming change orders electronically; (3) use an independent third party to verify the subscriber's order; or, (4) send an information package that includes a postpaid postcard which the subscriber can use to deny, cancel, or confirm a service order, and wait 14 days after mailing the packet before submitting the PIC change order.<sup>8</sup>

The Public Staff notes that as late as 1993, the Commission recognized the lack of consumer protection afforded by three of the four verification methods included in the proposed rules. In the Order in CC Docket No. 91-64 adopted on April 23, 1993, and released on May 14, 1993, the Commission said "[t]he verification procedures that we adopted in the PIC Verification Order provide consumers additional protection against switching of a customer's long distance service without verification. **These verification procedures were not intended to substitute for written authorization from customers as evidence in a PIC change dispute.**"<sup>9</sup> (Emphasis added.)

The Commission further stated that "[it] has steadily maintained the importance of the LOA as a consumer protection mechanism. [The Commission] stated that LOAs were designed to be used in dispute resolution and that the dispute resolution procedures and the requirement that IXCs obtain LOAs from their customers 'were designed to ensure that end users were afforded protection both from mistakes made by the LECs during the conversion process and from I[X]C marketing abuses.'"<sup>10</sup>

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<sup>7</sup> CC Docket No. 83-1145, Phase I, Investigation of Access and Divestiture Related Tariffs, *Memorandum Opinion and Order*, 101 F.C.C. 2d at 929.

<sup>8</sup> See generally CC Docket No. 94-129, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, *Report and Order*, 10 FCC Rcd 9560.

<sup>9</sup> 8 FCC Rcd 3216 (1993)

<sup>10</sup> *id.*

The Public Staff believes that the verification method that has come under the most scrutiny by the Commission, and probably by state commissions, is the written LOA. This is due, in large part, to the massive abuse of this verification method by many companies that are simply out to convert as many consumers as possible. As a result, the Commission issued specific rules concerning the requirements for a valid written LOA.<sup>11</sup>

Another reason for the scrutiny being given written LOAs may be the unavailability of hard evidence to ascertain the guilt or innocence of a carrier when the other verification methods are used. The Public Staff has dealt with numerous complaints in which the carrier has alleged that the consumer agreed to the carrier change while the consumer has denied it. The common thread among these complaints is that, while the carrier cannot provide proof that the change was requested, the consumer cannot prove that it was not.

This problem occurs even when the carrier alleges that it has obtained third party verification. Many complaining consumers have indicated that they merely requested to receive written information concerning the carrier's services. Thus, the third party verification that the carrier alleges occurred would appear merely to have given the carrier authority to provide written information concerning the carrier's services. In these cases, even taped verifications will not substantiate the carrier's claim to have a valid authorization or the consumer's claim that only information was requested. Under the Commission's proposed rules the consumer would still be unable to confirm the content of the call.

The Public Staff believes that the lack of clarity associated with the verification methods, other than the written LOA, is precisely the reason that the Commission should impose specific guidelines on all of the verification options.<sup>12</sup> Without specific guidelines, the Public Staff believes that consumers will continue to dispute changes made through the use of third party verification. Without the proof that is available with written LOAs, a strengthening of the penalties for unauthorized changes will be irrelevant, because the consumer will be unable to show that the change was not authorized.

As shown by a review of the slamming complaints received by the NCUC, written LOAs are not the problem they once were. In joint comments filed in NCUC Docket No. P-100, Sub 139, MCI Telecommunications Corporation, Sprint Communications Company, LP, ICG Telecom Group, Inc., WorldCom, Inc., and Business Telecom, Inc. (Joint Commentors), provided an analysis of slamming complaints for the calendar year 1996 and through the first part of 1997.<sup>13</sup> This analysis indicates

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<sup>11</sup> 47 C.F.R. § 64.1150.

<sup>12</sup> The Commission will have effectively dealt with one option by eliminating the "Welcome Package" as a verification method.

<sup>13</sup> Exhibit E of Joint Comments filed on July 17, 1997, in NCUC Docket No. P-100, Sub 139.

that complaints concerning written LOAs comprised the largest category of complaints for the studied time period.

In order to obtain more current and detailed information concerning the apparent basis of slamming complaints, the Public Staff conducted a separate review of complaints received in 1997 through August 15, 1997. The results are shown below in comparison with the analysis performed by the Joint Commenters.

Comparison of Complaints Filed With NCUC

<u>Type of Verification</u>	<u>Joint Commenters</u>	<u>Public Staff</u>
Written LOA	41%	13%
Electronic Verification	0%	0%
Third Party Verification	15%	36%
Welcome Package	7%	1%
LEC or IXC Error		9%
Customer Initiated		2%
Unknown	37%	39%

While a direct comparison between 1996 and 1997 is not available, the evidence is clear that carrier change complaints involving written LOAs as the means for verification are becoming less significant, while carrier change complaints involving third party verification are becoming much more significant.

The Public Staff believes that the drop in the percentage of written LOA slamming complaints can be directly attributed to the Commission's Report and Order adopted in CC Docket No. 94-129 on June 13, 1995, and released on June 14, 1995. This Order greatly strengthened the rules concerning valid written LOAs. However, due to the time lag between the change in the rules and the filing of complaints by consumers, the impact of the change did not begin to affect the level and type of complaints until late in 1996.

As shown above, the Commission's strengthening of the requirements regarding written LOAs appears to have had a positive impact on the number of complaints alleged by consumers in which the verification method used was a written LOA. An important feature of the revised requirements for written LOAs is that they specified the information that must be contained on the written LOA in order for it to be considered valid. This clarification has simplified the process for all parties -- the consumer, the IXC, and the Public Staff -- in cases involving complaints by consumers in which written LOAs are used for verification.

The Public Staff believes that any verification methods adopted by the Commission should reflect the written LOA requirements embodied in the proposed 47 C.F.R. § 64.1150. Only by duplicating the requirements of the written LOA can the Commission realistically expect that

slamming complaints will be reduced. In effect, the requirements necessary for obtaining a valid 800 number or third party verification should be that these verification methods be the electronic or oral equivalents to the written LOA. Further, these verifications should be recorded and stored for twelve months. Implemented in this manner, the 800 number and third party verifications will be equivalent to the written LOA and be better able to provide proof of the validity of a carrier change.

The Public Staff believes that all practices used by carriers to procure customers should be subject to verification procedures. While telemarketing calls and contest LOAs have typically generated the most complaints in our experience, the Public Staff does not believe the Commission's verification rules should be limited to these kinds of solicitations. Indeed, the Public Staff believes that not requiring all forms of solicitation to be adequately verified will place an unfair burden on consumers to prove that an unauthorized change occurred, because it will prevent a record of the transaction from being produced. As the Commission notes in the FNPRM, the lack of a record would make it difficult to ascertain the facts involved in any in-bound slamming dispute. The Public Staff strongly believes that the need to have a record of the verification applies to all types of solicitations.

#### **What Are the Costs of the Rules?**

The Public Staff is not able to provide the Commission with estimates concerning the costs to IXCs or other telecommunications providers of the rule changes proposed by either the Commission or the Public Staff. However, in the past few years, the Public Staff has had to hire additional complaint analysts. These staff additions are, in part, due to the increase in slamming complaints made by consumers in North Carolina. Thus, the costs associated with slamming are not just incurred by IXCs and consumers, but also with the consumer advocate agencies attempting to resolve the disputes.

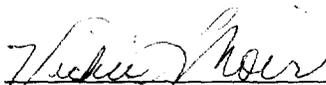
#### **Clarification of Proposed Rules.**

The rules appear to consider changes made in error by the submitting or executing carrier to be unauthorized. The Commission should make clear that all unauthorized changes, even changes made in error, are considered to be invalid carrier changes and subject to the liability provisions of the rules. In addition, the Commission should specify that its proposed rules are the minimum requirements with which carriers must comply and that the states may, if they choose, impose additional requirements on carriers in order to prevent unauthorized carrier changes.

Respectfully submitted,

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